



**STATE OF NEW JERSEY**  
**Board of Public Utilities**  
**Two Gateway Center**  
**Newark, NJ 07102**  
**www.bpu.state.nj.us**

IN THE MATTER OF THE JOINT PETITION OF UNITED  
TELEPHONE OF NEW JERSEY, INC. D/B/A SPRINT )  
AND LTD HOLDING COMPANY FOR APPROVAL  
PURSUANT TO N.J.S.A. 48:2-51.1 AND N.J.S.A. 48:3-  
10 OF A CHANGE IN OWNERSHIP AND CONTROL )

**PREHEARING ORDER AND**  
**ORDER ON MOTION TO**  
**INTERVENE**

DOCKET NO. TM05080739

**SERVICE LIST ATTACHED**

BY THE BOARD:

**BACKGROUND**

At its September 30, 2005 Agenda Meeting, the Board of Public Utilities ordered that a prehearing conference be convened in the above captioned matter, pursuant to N.J.A.C. 1:1-13.1. Said conference was held on October 11, 2005, after notice to all telecommunication carriers in New Jersey and other potentially interested parties. In attendance were representatives of United Telephone Company of New Jersey ("United"), AT&T Corp., the Division of the Ratepayer Advocate ("RPA"), the Communications Workers of America ("CWA") and Board Staff, as well as counsel for the Board. Upon consideration of the positions put forth by all parties in attendance, Board Staff makes, and the Board adopts, the following recommendations as to any disputed procedural and/or substantive issues in this case. The Board also addresses the Motions to Intervene filed by the Communications Workers of America and AT&T.

**1. NATURE OF PROCEEDINGS AND ISSUES TO BE RESOLVED:**

**A. Nature of Proceedings:**

Joint Petitioners United and LTD Holding Company ("LTD") (collectively "petitioners") request Board approval of a change in ownership and control of United from Sprint Nextel Corporation ("Sprint") to LTD.

**B. Issues to be Resolved:**

Whether the Petition should be approved under N.J.S.A. 48:3-10 and 48:2-51.1. The Board's review includes, but is not limited to, consideration of impacts of the merger on:

- a. Competition;

- b. the rates of ratepayers affected by the acquisition of control;
- c. the employees of the affected public utility or utilities; and
- d. the provision of safe and adequate service at just and reasonable rates.

At the prehearing conference the parties discussed specific issues that should be deemed relevant to the above referenced criteria. Because consensus could not be reached as to the appropriate scope of these issues, the parties were instructed to set forth their positions in writing, which they did on October 21, 2005.

Petitioners reiterate that this proposed transaction, if approved, would result in a change of corporate parent for United, and that it will remain a regulated Incumbent Local Exchange Company in New Jersey. Petitioners maintain that the Board should strictly utilize the guidance of N.J.S.A. 48:2-51.1 in determining what specific issues to consider in this proceeding.

The RPA also acknowledges that N.J.S.A. 48:2-51.1 sets out the controlling standard for determining the substantive scope of this proceeding. Moreover, the RPA maintains that in order to evaluate the four criteria contained in that statute, specifically the transfer's effect on rates, the Board must examine the company's cost of service, revenue requirement, possible cross-subsidization practices, and other elements that comprise a typical rate case. The RPA also states that it will be necessary to review the financial data of the corporate parent in order to adequately assess the transfer's impact on rates, and that an independent third-party audit is necessary to assess the reasonableness of the valuation done by petitioners witnesses.

The RPA also opines that the Board's review of the transfer's impact on competition necessarily entails an analysis of United's current unbundled network element ("UNE") rates and an examination of intrastate access charges. The RPA also urges the Board to analyze the financial effect of the transfer on the growth or diminution of jobs in New Jersey. It also urges the Board to examine United's payphone tariffs and its compliance with pertinent provisions of the federal Telecommunications Act of 1996.

Finally, the RPA proposes a schedule, more in line with that usually used for a traditional rate case. The RPA states that its expanded schedule more realistically accommodates inevitable discovery conflicts than that tentatively discussed by the parties at the prehearing conference. Should the Board defer examination of some of the above referenced issues to a later date, the RPA requests that the Board direct that a Phase II rate case be commenced not later than six months from now, to address the issues not examined in this proceeding, and that said matter be transferred to the Office of Administrative Law as a contested case.

On October 24, 2005, reply comments were submitted by the parties. Petitioners noted their disagreement that any of the matters cited by the RPA have any impact on the Board's review under N.J.S.A. 48:2-51.1 or 48:3-10. Instead, petitioners reconfirm their belief that the core analysis associated with this Petition is the analysis under N.J.S.A. 48:2-51.1, and that the other aspects raised by the RPA are simply designed to confuse the issues. Likewise, the petitioners dismiss the various rate, access charges and tariff issues as being beyond the scope of the present matter, and note that the Board does not have jurisdiction over elements such as labor agreements. Finally, the petitioners reject the demand for independent audits as being unnecessary and unwarranted.

The RPA, in its October 24, 2005 reply comment, takes objection to the date on the envelope of the hard copy version of petitioner's initial comments, and notes its belief that the petitioners failed to address the required issues associated with setting the scope of the hearing. The RPA also reiterates its belief that the payphone issue is properly associated with this matter and should be included despite the objections raised.

Upon review of the positions of the parties, the Board finds that there is no need to conduct a retail rate case or a review of petitioners' UNE rates as part of this proceeding. This Board enjoys wide discretion to examine, in the context of a proceeding such as this, any factors that affect, *inter alia*, the state of competition in New Jersey and the utility rates paid by New Jersey consumers. Moreover, as stated by the RPA, it is possible that United's cost of service and revenue requirement might change as a result of the proposed transfer. However, there has been no *prima facie* showing that the proposed transaction will directly alter the retail or wholesale rates actually paid by ratepayers in New Jersey, or access charges. On the contrary, petitioners have stated that rates will not be affected by the proposed change of ownership. Obviously, this assertion should and will be tested by the parties to this proceeding, and determining its verity is, in our opinion, one of the most immediate and direct tasks before this Board in accordance with the "rate" prong of the N.J.S.A. 48:2-51.1 standard. But in light of the nature of this proceeding, in which an ILEC's corporate parent may change without any ostensible effect on the rates paid by wholesale or retail ratepayers, we do not believe we are required to dramatically expand the scope of this proceeding to encompass these lengthy, complex and burdensome undertakings in order to fulfill our mandate under N.J.S.A. 48:2-51.1 or any other relevant statute. This conclusion is buttressed by the fact that the Board has not engaged *per se* in full rate-cases in its reviews of past mergers or transfers involving rate-regulated telecommunications entities. E.g., I/M/O the Joint Petition of SBC Communications, Inc. and AT&T Corp., Together with its Certificated Subsidiaries for Approval of Merger, Docket No. TM05020168.

However, should we approve the proposed change of control, and should it become clear to the Board at a later date that changes in the revenues, rate base or other financial condition of the new company necessitate a downward correction in retail rates or intrastate access charges, an appropriate proceeding could be convened at that time to ensure that such rates or charges remain just and reasonable. Similarly, should it become clear that the Total Element Long-Range Incremental Cost of any of the UNEs which LTD remains legally required to provide has been materially altered as a result of the change of control, an appropriate proceeding can be convened to examine the company's UNE rates. We decline to set a firm date for such proceedings, for the reasons stated above.

Moreover, we agree with the RPA that the expected job growth or loss of jobs in New Jersey is, pursuant to N.J.S.A. 48:2-51.1, a relevant subject matter in this proceeding. We also agree that United's payphone tariffs and its compliance with the Telecommunications Act's directives regarding payphone subsidies are relevant subjects herein, as more fully explained below. Finally, we will rely, as is traditional, on the proofs put forward by the parties to reach a just and correct decision regarding the subject matter of this proceeding. We do not need to engage the services of a third-party auditor for this purpose.

## **2. PARTIES AND ATTORNEYS OR REPRESENTATIVES**

The motions to intervene filed by AT&T Communications of NJ, L.P. and the Communications Workers of America, AFL-CIO are addressed below.

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**3. SPECIAL LEGAL REQUIREMENTS AS TO NOTICE OF HEARING:**

One evening public hearing is scheduled at a date and location to be announced. The Board rejects the demand by the Ratepayer Advocate for three public hearings, instead finding that one evening public hearing in the petitioners' service area is sufficient to provide the necessary opportunity for ratepayers to provide comment and input into the process. A draft notice is to be circulated to the parties by the petitioners.

**4. SCHEDULE OF HEARING DATES, TIME AND PLACE:**

Hearings will be held on consecutive days from January 18 through January 20, 2006, as necessary, before Commissioner Connie O. Hughes. Hearings will commence at 10:00 a.m. in the 8<sup>th</sup> Floor hearing room of the Board of Public Utilities, Two Gateway Center, Newark, New Jersey.

**5. STIPULATIONS:**

None.

**6. SETTLEMENT:**

Settlement conference(s) among the parties are encouraged and may be convened at the convenience of the parties without prior approval or knowledge of the Board.

**7. AMENDMENTS TO PLEADINGS:**

None.

**8. CASE EVENT AND DATE FOR COMPLETION:**

The Board has carefully considered the scheduling proposals set forth on an informal basis by the parties in attendance at the Prehearing Conference of October 11, 2005. Given the Board's decision regarding the scope of this proceeding, as set forth above, and the RPA's request for extra time for the preparation of witness testimony and initial briefs, we find the following procedural schedule affords the parties adequate time to prepare and prosecute their cases, while permitting the Board to conduct this proceeding in an efficient and timely manner.

RPA/Intervenor Initial Testimony	November 28, 2005
Discovery Requests on Initial Testimony*	December 5, 2005
Final Responses to Discovery Requests on Initial Testimony	December 16, 2005
Public Hearing	TBA
Petitioner Rebuttal Testimony	December 21, 2005
Discovery Requests on Rebuttal Testimony	December 28, 2005
Discovery Responses on Rebuttal Testimony	January 10, 2006
RPA/Intervenor Surrebuttal	January 13, 2006 (Noon)
Evidentiary Hearings	January 18, 19 & 20, 2006
Initial Briefs	February 10, 2006
Reply Brief	February 24, 2006
Anticipated Board Decision	Second Agenda Meeting in March, 2006

\*Discovery may commence immediately

**9. ORDER OF PROOFS:**

1. Joint Petitioners
2. Ratepayer Advocate
3. Others
4. Board Staff

**10. EXHIBITS MARKED FOR IDENTIFICATION:**

None at this time

**11. EXHIBITS MARKED IN EVIDENCE:**

None at this time.

**12. ESTIMATED NUMBER OF FACT AND EXPERT WITNESSES:**

Joint Petitioners	4 (approximately)
Ratepayer Advocate	2 (approximately)
Intervenors	TBA
Board Staff	None contemplated at this time.

**13. MOTIONS CONTEMPLATED, PENDING OR GRANTED:**

Motions to intervene were required to be served and filed on or before October 18, 2005. Responses thereto were required to be filed on or before October 25, 2005. No other motions are contemplated at this time.

**COMMUNICATIONS WORKERS OF AMERICA**

On October 17, 2005, the Communications Workers of America, AFL-CIO ("CWA"), a labor organization representing approximately 700,000 workers, filed a motion to intervene in this matter. In support of its motion CWA asserts that it represents approximately 85 employees of petitioner United. CWA cites several prior Board telecommunications proceedings in which it was granted intervenor status. CWA further states that its members will be directly affected by the outcome of this proceeding, as both United employees and consumers. Specifically, CWA expresses its interest in the proposed new owner's financial viability, with an eye to its debt structure and asset allocation. CWA is also concerned that the new entity has the ability to adequately invest in infrastructure and local telephone operations, and will maintain adequate staffing levels to ensure quality service and the deployment of advanced service to local telephone customers.



## DISCUSSION

Motions for intervention are controlled by the standards set forth in N.J.A.C. 1:1-16.3. In the absence of statutory permission for intervenor status, any person or entity who will be "substantially, specifically and directly affected by the outcome of a contested case" may seek to intervene as a full party to the proceeding. N.J.A.C. 1:1-16.1(a). Pursuant to N.J.A.C. 1:1-16.3(a), adjudication of such a motion requires an analysis of the "nature and extent of the movant's interest" in the matter, whether or not the "movant's interest is sufficiently different from that of any party so as to add measurably and constructively to the scope of the case," "the prospect of confusion or undue delay arising from the movant's inclusion," and other appropriate matters. Every motion for leave to intervene also acts, in the alternative, as a motion for permission to participate. N.J.A.C. 1:1-16.5. Participation provides a lesser level of involvement in the matter and requires a showing of a "significant interest" on the part of the moving party. N.J.A.C. 1:1-16.6(a).

Here, CWA neither has nor asserts a statutory right to participate, so must instead make a showing that its intervention, or, in the alternative, participation, is proper. Without making any determination as to the outcome of this proceeding, we find that CWA has made an adequate showing of its interest in this matter to permit intervention. The proposed change of control has the potential to affect CWA's members in a direct and substantial way. We also note that the reviewed transaction's affect on utility employees is one of the criteria specifically enumerated for Board consideration in N.J.S.A. 48:3-10. Moreover, we find that CWA's participation will constructively add to the record, and that at this early stage of the proceeding, no party can claim to be unfairly prejudiced by its intervention, which was timely filed according to the schedule set out during Staff's Prehearing Conference.

### AT&T COMMUNICATIONS OF NJ, L.P.

On October 18, 2005, AT&T Communications of NJ, L.P. ("AT&T") filed a motion to intervene in this proceeding. In support thereof AT&T states that it is both a wholesale customer of United's intrastate access services and a direct competitor of United's with regard to various intrastate services. Furthermore, AT&T states that it has been illegally forced to overpay Sprint for intrastate access services, due to Sprint's alleged failure to comply with federal law requiring it to eliminate payphone-related subsidies from its intrastate access charges. AT&T states that it will prove that such practices have had and continue to have a substantial impact on both rates and competition.

AT&T alleges that it will be substantially prejudiced if the proposed transfer of control is allowed to take place without a resolution of the payphone issue. It states that the new company may lack the institutional memory and record-keeping capacity, as well as adequate capital resources, to address the disputed issues, and that AT&T's intervention is necessary to ensure that any spun-off company is not able to avoid this responsibility. AT&T also states that United's alleged practices harm competition and ratepayers by burdening AT&T with greater payphone routing costs, and its customers with correspondingly higher rates. Thus, AT&T believes its interest in preventing the spun-off company from continuing these allegedly illegal practices warrants its intervention in this matter.

By letter dated October 21, 2005, petitioners opposed AT&T's intervention. Petitioners opine that AT&T's motion, although styled as a motion to intervene, is actually a motion to consolidate the instant proceeding with another matter currently before the Board, I/M/O the Filing by United

Telephone Company of New Jersey, Inc., d/b/a Sprint, for Revision of Tariff New Jersey B.P.U. - No. 4 in Connection with Pay Telephone Reclassification and Compensation Provisions, Docket No. TT97010021. Petitioners argue that AT&T has failed to meet the test for either intervention or consolidation.

According to petitioners, the fact that the issues in dispute with AT&T are already the subject of a pending petition before the Board indicates that AT&T has no legitimate interest in intervening in this proceeding. They argue that AT&T's actual interest is to gain leverage in that pending proceeding and its pending negotiations with Sprint. Petitioners further argue that the tariff issue is unrelated to the proposed transfer, and that the former can and should be resolved separately without prejudice to any party. Petitioners further contend that payphone issues are not an effect of the change in ownership they propose in this proceeding, because the tariffs at issue will not change as a result of the transaction. Accordingly, AT&T's petition, in the eyes of petitioners, amounts to a motion to consolidate two unrelated matters. Petitioners see no common questions of law or fact between the two, and contend that the danger of confusion, delay and undue prejudice to all parties except AT&T far outweighs any benefit in consolidating the two proceedings.

Petitioners also contend that the Board is not empowered to examine the effect of the merger or transfer on specific individual rates or tariffs, but should limit its review to the effect on overall rate trends. Petitioners also argue that a review of payphone tariffs would amount to a review of United's past practices, when the Board's review should be focused on the forward-looking effect of the transfer.

On October 24, 2005, AT&T filed its reply, in which it reasserted its interest in the matter and its need to be a party to this proceeding irrespective of the Pay Telephone proceeding already pending before the Board. Additionally, AT&T notes that the objection raised by petitioners make clear why intervention, or, if the Board so chooses, consolidation, is appropriate and proper, as petitioners would leave unavailable any venue for resolution of AT&T's claims. Based upon this, AT&T once again calls for the approval of its intervention motion or, in the alternative, a consolidation of this matter with the Pay Telephone docket currently pending.

## DISCUSSION

We find that AT&T has shown a sufficient interest in the outcome of this proceeding to be allowed to intervene as a full party. AT&T's interest is related to the current and going-forward practices of an ILEC from which it purchases services and against which it competes in New Jersey. Moreover, no other similarly-situated party which might adequately represent AT&T's interests has moved to intervene. On these facts alone we would find intervention proper under N.J.A.C. 1:1-16.3(a).

AT&T also asserts its interest in the outcome of a tariff dispute with Sprint as supportive of its legitimate role in this case. Petitioners find this interest to lack legitimacy, since the payphone issue is not, in petitioners' view, related to the proposed change of control. We note as a threshold matter that N.J.A.C. 1:1-16.3(a) does not define the exact nature of the interest a party must have in order to be worthy of intervention. Rather, the regulation simply defines an appropriate interest as a matter of degree.

While we are mindful of restricting our review in this proceeding to issues related directly to the transfer of control proposed by petitioners, on balance we find that permitting petitioner Sprint to spin-off its ILEC operation without resolving, or at least considering, a significant and ongoing

rate-related practice that will purportedly continue post-transfer and potentially affect both competition and rates would not, in the present circumstances, comport with an appropriate implementation of the standard of review set forth in N.J.A.C. 48:2-51.1. Nor would it represent an efficient use of Board resources. Whatever the underlying merits of the payphone tariff dispute (and the Board currently has no opinion with respect thereto) AT&T clearly maintains a genuine interest in attempting to ensure that the spun-off ILEC entity does not continue practices which AT&T considers to be illegal. While petitioners may disagree with AT&T's legal conclusions as to the underlying case, this by itself does not negate AT&T's substantial interest in the outcome of this proceeding.

Moreover, we agree with AT&T that a change in United's corporate ownership has the potential to disrupt AT&T's ability to seek redress for its grievances at a later date, due to changes in personnel, record keeping, and accounting practices. More importantly, all parties in this case have an interest in ensuring that the new entity is financially stable and sufficiently capitalized to provide safe and adequate service in New Jersey. In AT&T's view, this obligation extends to being able to reimburse it for past alleged overcharges. Thus, AT&T's interest in the outcome of this proceeding, as opposed merely to the outcome of its dispute with Sprint, has been demonstrated to a sufficient degree to allow intervention.

As petitioners point out, the payphone tariff dispute is the subject of another proceeding currently pending before the Board. However, this does not by itself indicate that the issue is unrelated to the proposed transfer. Furthermore, we disagree with petitioners when they state that the Board's review of a specific rate or tariff is *per se* inappropriate in a proceeding of this type. The Board is empowered to analyze any component of a proposed transaction that will impact on rates. While the Board may often focus on the overall rate effects, petitioners cite no authority, nor are we aware of any, suggesting that the Board is precluded from examining individual rates or tariffs in its N.J.S.A. 48:2-51.1 review, irrespective of their effect on the four criteria. Indeed, such preclusion would be especially inappropriate in the context of a merger involving an incumbent local exchange carrier.

Based on the forgoing conclusions, we do not address whether AT&T is attempting to gain leverage in its negotiations with Sprint over the payphone issue. Nor do we address whether AT&T's showing is sufficient for the purposes of a motion to consolidate under N.J.A.C. 1:1-17.3(a), which is inapposite to this matter. However, we note petitioners' concern that inclusion of the payphone issue will create a discovery "nightmare" and necessitate extra expert witnesses in this proceeding. While we are attuned to the need to conduct this case in a timely and efficient manner, we are not cognizant, nor do petitioners opine, as to why the Board should have to oversee said nightmare in a separate stand-alone proceeding at some undetermined future date, as would presumably be required, rather than now.

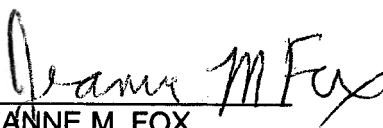
#### **14. OTHER SPECIAL MATTERS:**

None.

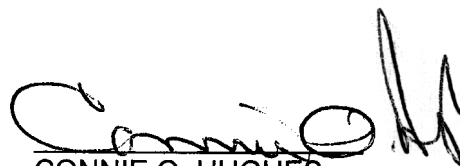
Therefore, upon consideration of the forgoing, the Board **HEREBY ADOPTS** the foregoing recommendations in the above captioned matter, and **HEREBY GRANTS** the motions to intervene of the Communications Workers of America, AFL-CIO and AT&T Communications of NJ, L.P.

DATED: 10/27/05

BOARD OF PUBLIC UTILITIES  
BY:

  
JEANNE M. FOX  
PRESIDENT

  
FREDERICK F. BUTLER  
COMMISSIONER

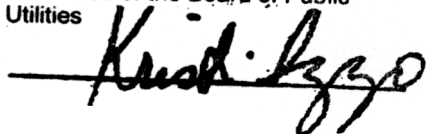
  
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ATTEST:

  
KRISTI IZZO  
SECRETARY

I HEREBY CERTIFY that the within document is a true copy of the original in the files of the Board of Public Utilities



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